THE SCHEME OF SEPARATION OF CITY AND COUNTY GOVERNMENTS IN SAINT LOUIS—ITS HISTORY AND PURPOSES

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The city of St. Louis and the county of St. Louis are two totally separate and distinct political subdivisions of the state of Missouri. The city of St. Louis is, for all political purposes, a county as well as a city, and has been such since the adoption of the Scheme and Charter in 1876. It is the existence in the city of St. Louis of the powers of a county, and its character as a political subdivision of the state, which makes it unique among the cities of the United States. At the time of the adoption of the charter I believe there was no other city in the United States which was organized in a similar manner, though subsequently other cities have framed charters more or less along the lines of that of St. Louis. In fact, the St. Louis Charter was, at the time of its enactment, considered by many a model instrument. The idea of "home-made" charters became popular. The spread of the so-called "Missouri Idea" was shown by amendments to the constitutions of several states. Most of these provided for a degree of "home-rule" for cities. The importance of the separation between the city and county which had taken place in St. Louis seems to have been largely overlooked in the legislation which followed, both in Missouri and elsewhere. That separation, however, was absolute. It was not a consolidation of the city and county. The city was carved out of the county of St. Louis, and made, for all intents and purposes, a separate county.

St. Louis originated as a corporate entity in 1809, when it was incorporated by the court of common pleas for the district of St. Louis, under authority of an act of the legislature of the territory of Louisiana. After the admission of the state of Missouri into the Union, St. Louis received a new charter from the legislature on December 9, 1822, and from that date until 1876, when the present charter was adopted, the city continued to be operated under various charters enacted by the state legislature. The state was continually changing and

altering the charter of St. Louis; the limits of the city were constantly extended; in fact, the legislature of Missouri showed the same tendency which has been apparent throughout the other states of the Union, to be constantly tinkering with the charters of the large cities. These changes and amendments, it is needless to say, were not always enacted for the benefit of the city itself, but frequently for political motives, to give some advantage to the party in power in the legislature. Frequently also, these amendments were offered by the city's own representatives, to serve their private ends and for purposes of purely personal advantage.

From 1852 to 1876 the city charter was changed almost every year. Experiments were made with two houses in the municipal assembly and with one. In 1870 the corporate limits of the city were again extended to embrace the town of Carondelet, and a revised charter was enacted. It was under this legislative grant, as amended from year to year, that the city was operating, when the proposition was made for the adoption of the present charter. At that time the city was suffering from two distinct evils, first, the dominance of county politics in the administration of city affairs, and, second, the control of city affairs by the state legislature. I think an examination of the literature of the time will show that the general impelling motive for the adoption of the present charter was a desire to be rid of interference in local affairs by the state government. This charter represented a tremendous advance in the government of the city along almost every line, and the separation from the influence of the county was undoubtedly one of the motives which strongly induced the voters to adopt it; but the fact that the charter was not under the control of the city and was being constantly changed and amended by the state, was, I think, felt as the chief burden from which the voters desired to rid themselves.

An examination of the session acts of the state prior to 1876 will show in what great detail the state undertook to regulate city affairs. This is true not only of the affairs of the city of St. Louis, but of all the cities in the state. The acts are packed with local statutes referring specifically and by name to various cities, such as Joplin, St. Joseph, Jefferson City, Kansas City and St. Louis. By these acts, the duties of the mayor were defined as were also the duties of the city marshal and the method of appointing officers; police courts were established, and the duty of police justices defined; the method of taxation and the rates of taxation were set out. There is no conceivable subject,

in relation to purely municipal affairs, which the legislature did not control at will. The public debt of cities was limited only by such provisions as the legislature saw fit to enact, and a politician who desired, for his own purposes, to increase the public debt of a city, did not usually find it difficult to obtain legislative consent.

In addition to these evils, which were by no means peculiar to St. Louis, nor even to cities of Missouri, St. Louis was burdened by the presence of county officers, and the control of many municipal affairs by the county. There were, of course, certain matters which were properly subjects for state regulation, such as the election of judges, the preservation of the peace and the collection of state revenue. In regard to these, there seems to have been little conflict between city and county authorities, but other matters which are in their nature such as should be controlled by the local authorities, were partly under the power of city officials and partly under the authority of the county court. The county, in addition to being a political subdivision of the state, was a corporate entity with many purely local duties to perform, and its corporate powers were represented and embodied in the county court. As far as the government of the city was concerned, the county of St. Louis was the county court, and the county court was the county of St. Louis. This court sat within the city. There were seven members. It had the power to appropriate money for a great many purposes; it spent money yearly for the improvement of the roads and the public buildings in St. Louis County. Charges of extravagance were freely made, and were, I have no doubt, justified. The appropriation for roads and bridges by the county court the year before the adoption of the present charter, amounted to $300,000, and other expenditures were proportionate. The citizens of St. Louis, of course, paid by far the large portion of this burden. The taxes of the county were collected very largely in the city and expended very largely in the county. There was a loose system of administration of county affairs. No adequate check was kept upon the expenses of the county court; salaries were high; office-holders were prospering; embezzlement was by no means unknown, if we may judge from the accounts in the daily press of the time. A system of extravagance in the administration of public affairs had grown up, which was felt chiefly by the citizens of the city, and which they found extremely difficult, if not impossible, to control. There were a great many more offices than was necessary for the administration of public affairs. This double system of government, as it was labeled

in the press of the time, was felt to be a reckless scattering of the public funds.

The charter enacted by the legislature in 1870 was a rather crude instrument. There seemed to be no relief in sight except by a radical departure from the former state of affairs. The demand was made first for a new constitution of the state of Missouri, and, second, for a new charter for St. Louis.

The first step which was taken was the enactment of a new constitution. By this constitution, it was supposed that a new order of things would be initiated affecting all the cities of the state. Limits were placed upon municipal indebtedness; cities were prohibited from lending their credit to any individual or association or from becoming stockholders in any corporation, association or company; the legislature was forbidden to pass special and local laws, regulating the affairs of counties, cities, townships, wards or school districts or incorporating cities, towns or villages or changing their charters. It was required that the general assembly should provide, by general laws, for the organization and classification of cities and towns, and that the number of classes should not exceed four, and that the powers of each class should be defined by general laws, so that all municipal corporations of the same class should possess the same powers and be subject to the same restrictions. In addition to these four classes, the constitution specially provided for the city of St. Louis, and also for any city having a population of more than one hundred thousand inhabitants. By different provisions St. Louis, and any city having a population of over one hundred thousand inhabitants, were given the right to make their own charters.

By section 20 of Article IX of the Constitution, it was provided that the city and county of St. Louis might elect a board of thirteen freeholders, whose duty it should be, in the words of the constitution, "to propose a scheme for the enlargement and definition of the boundaries of the city, the reorganizations of the government of the county, the adjustment of the relations between the city thus enlarged and the residue of St. Louis County, and the government of the city thus enlarged, by a charter in harmony with the subject to the constitution and laws of Missouri." It was further provided that this scheme "as submitted by the board of freeholders, should then be submitted to the voters of the whole county, and that the charter should be submitted to the qualified voters of the city."

There are one or two other rather interesting provisions in regard

to this charter, contained in the constitution. For example, in Section 23, it is provided that, "in the adjustment of the relations between the city and county, the city shall take upon itself the entire park tax, and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, it shall assume the whole of the county debt, and thereafter the city and county of St. Louis shall be independent of each other. The city shall be exempted from all county taxation. The judges of the county court shall be elected by the qualified voters outside of the city. The city, as enlarged, shall be entitled to the same representation in the general assembly, collect the state revenue and perform all other functions in relation to the state, in the same manner as if it were a county, as in this constitution defined." And then, by Section 25 of Article IX, the Constitution enacted a provision, which to some extent at least, counteracted the beneficial effects which were anticipated from the charter. That provision was: "Notwithstanding the provisions of this article, the general assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this state."

The purpose of these provisions is obvious. It was to prevent the state legislature from constantly meddling with local affairs of cities. Having accomplished this much, the advocates of reform devoted their attention to the forming and adoption of a scheme of separation between the city of St. Louis and the county of St. Louis, and of a municipal charter for the city. Prior to this time, apparently the matter had not excited a great deal of interest among the citizens at large. There had been, it is true, opposition to the adoption of the amended constitution. The representatives of the outlying portions of St. Louis County at the convention, were strenuously opposed to what they called a "divorce between the city and county."

After the adoption of the constitutional amendments a fight was inaugurated between the advocates of reform and the adherents of the old regime, and this fight was conducted along familiar lines. The reformers were represented by the *St. Louis Republican*, and the opponents of the new proposition, by the *St. Louis Globe Democrat* and the *St. Louis Daily Times*. The opponents of the new charter were called "bummers," "schemers" and "ring-masters"—"tax-eaters"—against whom the tax-payers were warned. The people were urged to vote down the politicians, the office-holders who fatten from the public purse, to do away with the domination of the country court

and the interference of the state legislature. The *County Republican* says, in an editorial of August 22, 1876: "If the Scheme and Charter are defeated, the tax-payers go down with it, and those who live and thrive on expanded revenues, contracts and official salaries, become established in power and influence more firmly than ever. . . . It is not an accident that the county court, the members of the present city council, one half of all the city and county officials, and all the trained professional politicians in the wards are arrayed against the proposed measures. It is not a chance that the whole swarm of aspirants to the county offices, Democrats and Republicans, are on the same side. It is a significant fact; it reveals the nature of the contest and shows clearly enough where the tax-payers' proper place is. If that class of persons who devour revenues are all on one side, the other class of persons who pay the revenues, may safely conclude that they ought to be on the other. It is natural that the new charter should encounter the opposition of those who are fighting it. They look on it with horror. Its iron prohibitions against debt and extravagance and its political exactions of accountability and severity against public officers, are odious to them. They like the slipshod, happy-go-easy way of doing things, under which we now live, and which leaves the people no redress for defalcations and embezzlements."

And in the same issue, there is another item in regard to the new charter and the city debt. It is pointed out that the debt at that time was something over $17,000,000, and the writer, commenting upon this, adds: "For ten years past we have been increasing our indebtedness until we have got it up to the present proportions. Here it must stop and here it will stop if the new charter be adopted, and that is not all. The new charter not only prohibits the debt from growing any larger, but it provides for its gradual and certain liquidation."

Under the legislative charter, prior to the adoption of the present one, there was but one branch of the municipal assembly, which was known as the city council. This body was evidently in great disrepute, and one of the benefits to be gained by the adoption of the proposed instrument was the abolition of this council. As was stated by an editorial writer of the *St. Louis Republican*, the adoption of the new charter would result in a reorganization of city affairs, and it would be "soon, swift and pangless with the present city councils."

Shortly after the adoption of the charter, its effect upon the public expenses was very marked. In a speech by the Hon. T. T. Gantt,

made before the Missouri Historical Society, upon the public career of Mayor Overstolz, who was the first mayor under the new charter, it is stated that the city had found it necessary to raise revenue by the issuing of so-called anticipation bonds. These bonds bore interest and could only be sold at a discount. This method of raising revenue was a very burdensome one. During the years 1870 and 1871, the city issued $1,050,000 worth of these anticipation bonds, and this amount increased until in 1875–1876, the year before the adoption of the charter, $1,550,000 worth of bonds were issued. Immediately thereafter, the amount of bonds issued began to decrease, and in 1879–1880 only $350,000 were issued. At the present time the issuance of such bonds has long become a thing of the past.

The abolishing of the county court and the doing away with county offices in the city of St. Louis undoubtedly resulted in a large saving of money. The board of public improvements, which under the new charter took charge of public works, expended less money, but according to Colonel Gantt, the expenditure was more judicious and the improvements were of a better character. So great was the retrenchment of expenses by the board of public improvements, that the machine politicians and all the enemies of good and economical administration of municipal affairs, desired vehemently to abolish the board, even if they could not in all other respects abolish the new charter.

The results following during the next five years were evidently highly satisfactory. The expenses of the city were reduced, and this resulted in reduction of taxation. The management of public institutions was more efficient and the system of administering public works was much improved. The new charter placed a direct responsibility upon the heads of departments, and gave them the power to appoint their assistants and subordinates. It provided for a sort of ambiguous civil service, by making the tenure of office of assistants, "during good behavior," subject, however, to removal at the will of the head of the department. Responsibility for the administration of public affairs became more concentrated; the charter was a long step, at least, in the right direction. This charter was for many years considered a model. The peculiar provisions for the operations of the board of public improvements have been regarded as the best scheme yet devised for the letting out of public work.

To return to the relations of the city and county. At the present time, the important thing is that the city is entirely free from any county interference whatever. There are no county officials in the

city, and the city is entirely free from county taxation. The officials in the city are either municipal or state, and many of them perform the functions of both. It is frequently difficult to say whether a given official is to be regarded as a state or a city officer.

For example, the collector of the city holds an office created by the charter, but he collects the state taxes and the school taxes, as well as the city taxes, and very explicit provisions are enacted for the proper accounting of each fund. The license collector, on the other hand, is created by state law. He collects licenses due both to the city and to the state. The circuit attorney is a state officer; justices of peace are state officers; so also are the prosecuting attorney and the judge of the court of criminal correction. Yet all of these officials receive their salaries from the city. The state law, creating the office in each case, provides that a certain salary shall be paid to the officer out of the treasury of the city. The judges of the circuit court in the city of St. Louis are state officers and receive part of their salary from the state, but the statute provides that the city shall pay a part of their salaries. In fact, the city pays more than three-fifths of it. It is thus apparent that the entire conflict at present as between various officers in St. Louis and various functions of government in St. Louis, is bound to be a conflict between the municipality and the state. All conflict between the city and the county has been eliminated.

The predictions of the advocates of the charter in 1876, that it would free the city from legislative tinkering by the state legislature, have not been altogether fulfilled. To begin with, the constitution, which forbade the passage of any special act affecting cities, also provided for the classification of cities, and that the city of St. Louis should be subject to state control, just as any other city within the state. The result has been that the legislature can very easily frame a law so as to effect the city of St. Louis, by merely enacting a statute on its face applicable to all cities having more than three hundred thousand inhabitants. This number was selected by the legislature because St. Louis was the only city within the state having more than that number, so that it has become a truism in regard to the statutes of Missouri, that all legislation affecting cities of three hundred thousand inhabitants or over, is legislation aimed directly at St. Louis. In three instances, especially, has the legislature practically enacted provisions for the control of municipal affairs. These three instances are: 1st, the election laws of the city of St. Louis; 2d, the police laws; and, 3d, the law creating the office of excise commissioner.

The charter, as originally passed, contained provisions for election and registration of voters. These provisions, however, were subsequently annihilated by the legislature. The same thing has happened in regard to the excise commissioner. Under the original charter, the collector had full charge of the issuing of dramshop licenses in the city; but in 1893, a law was enacted by the legislature, creating the office of excise commissioner for the city of St. Louis, thus abrogating the provisions of the charter. So, in regard to the license collector; originally, the collector performed the duties now performed by the license collector, in addition to his other duties. Subsequently, the city, by ordinance, created the office of license collector and transferred the duty of issuing licenses from the collector to this new officer. This ordinance furnished a suggestion to the legislature, and on March 26, 1901, an act was passed creating the office of license collector for St. Louis. This act was also in derogation of the provisions of the charter.

In 1899, the legislature enacted a police law for St. Louis, which increased the number of policemen and also increased their salaries. It created a board of five police commissioners, four of whom are appointed by the government. The fifth member of the board is the mayor. Drastic measures are provided to compel the city to make the appropriation for the payment of the police force so created. It is made a criminal offense for any member of the municipal assembly, or other city official, to obstruct the enforcement of the act or to refuse to vote for the necessary appropriation.

Numerous other cases might be cited, but enough has been said to show that the charter obviously did not secure for St. Louis the complete local control of municipal affairs which was confidently predicted at the time of its passage. This matter has become one of the issues in Missouri politics. At every election promises are freely made of home rule for the city of St. Louis, and provisions to that effect are inserted in the party platforms; but such home rule as St. Louis enjoys, in regard to her police force, her board of election commissioners and her excise commissioner, she enjoys at the will of the governor. Of course this state of affairs is not confined to Missouri. It is one of the evils against which our larger cities have been contending throughout the country. The chief mischief lies in the fact that the legislature is not particularly concerned with the affairs of the city. Many of the delegates who come from the country or from other cities, take little or no interest in the question. They are will-

ing to trade off their votes, and to support a measure introduced for the personal aggrandizement of some representative from St. Louis, in return for the support of such representative in regard to a pet measure of their own. At present, the evil does not rest heavily upon St. Louis, but the city is always threatened with some hostile legislation from Jefferson City. On the other hand, when a beneficial measure is proposed which might easily be carried in the city, the state legislature refuses to act. The purpose of the amended constitution of 1875, and of the charter was obviously to secure to St. Louis and other cities in the state, local control of municipal affairs. In this purpose, the charter has in a measure failed.

As to the separation which it accomplished between the city and the county of St. Louis, however, the charter was a complete success. The citizens of St. Louis are no longer burdened with a county tax, and they hear nothing of county officials or of the county court.

Some new questions have, however, recently presented themselves, in the relation between St. Louis city and county—questions which could not have been foreseen at the time of the separation.

Since 1875 the city has grown rapidly and has extended its population beyond the limits as established by the charter. Under that instrument, there is no provision for the further extension of the city limits. This was one of the points urged in favor of its passage in 1876. To extend the limits of the city would be to allow one political subdivision of the state to encroach upon the territory of another, and as the territory of St. Louis, contiguous to the city, becomes more and more densely populated, the question of the preservation of public order just across the border, is becoming important; so, too, the question of the proper disposal of sewage and the supplying of county residents with water.

In 1905, for example, there was a race track known as the Delmar Race Track, operating in St. Louis county just across the boundaries of the city. Several car lines ran from St. Louis to this race track, and the casual observer would have supposed that it was within the city limits. The race track was operated in defiance of the general law against gambling and betting on horse races. The failure of the county to suppress it became notorious, and finally, acting under the orders of the governor, the police department of St. Louis proceeded to arrest the men in charge. The officers who actually made the arrests were themselves arrested by county officials and brought before a justice of the peace, charged with illegally breaking into the

race track and with illegal assault upon the men in charge. A writ of prohibition was applied for, to prevent the justice of the peace from taking jurisdiction of the matter, and in the case of *State ex rel* v. *Stobie*, 194 Mo. *p.* 14, the supreme court ruled that the police department of St. Louis had no power or authority to make arrests in St. Louis county of persons for offences committed in the county. The decision, of course, met with the unanimous approval of the unlawful elements who operated in St. Louis county. At several places, just across the border, and where citizens of St. Louis congregated, there have recently been operated picture shows, gambling devices, theaters where vaudeville performances advertised under suggestive titles were given, and men have operated roullette wheels, shell games and other fraudulent schemes. All of these things the city is unable to suppress. The remedy lies in a proper administration of the law by the county, but the county is hardly to be blamed because these acts occur mostly in places which are for all practical purposes a part of St. Louis, and the offences are committed by residents of St. Louis, who seek the county as the field of their operations.

Another difficulty which grows out of the inability of the city to increase its boundaries, is the fact that small suburban cities grow up at its very gates, which are duly incorporated. The statute law of the state provides that no city or town shall be incorporated within two miles of the limits of any other city or town in the same county, but as St. Louis is not in St. Louis county, this provision is not applicable. The result is that we are threatened with a complicated system of adjoining cities which logically, and for practical purposes should be consolidated as one.

Of course, there are remedies for all of these situations. The framers of the charter could not be expected to have foreseen the results of the growth of the city. In accomplishing the complete separation of the city and county, they conferred upon the city an inestimable benefit.

The charter is not perfect. It is easy to find fault with it. No instrument can quite guarantee the public against official corruption. There have been dishonest assemblies; men have been charged with and convicted of bribery, and St. Louis has received her due share of advertisement on account of municipal corruption. Recently a new charter was submitted to the voters by a board of freeholders. This charter was framed along lines of greater concentration of authority

and responsibility. It was, however, defeated at the polls. But no one, of late years, has ever suggested that the present charter made a mistake in separating the city and county. That separation, I believe, has resulted in unqualified good, and I do not believe that any one could be found in St. Louis who would advocate a return to the old conditions.